



The Honorable Richard M. Berman  
United States District Judge  
April 22, 2008  
Page 2

Upon further investigation, I have determined that (212) 629-4568 is Drubner & Hartley's fax number from its previous address, which it moved out of almost two and a half years ago. Prior to speaking with Mr. Brettler, neither I nor anyone else at my firm had noticed that the wrong fax number was listed on the docket. With the exception of the mistaken fax number, all other information regarding Drubner & Hartley on the docket is correct.<sup>1</sup> I am not sure how Drubner & Hartley's old fax number came to be listed, but I am taking steps to ensure that any profile information on file with the Court regarding the firm is up to date and correct.

I apologize for not having noticed the mistaken fax number before this incident and for the inconvenience that this has caused the Court. Nevertheless, I respectfully submit that plaintiff's failure to attend the April 21 conference was based on an excusable mistake and that there is good cause to have the action restored to the calendar. In this regard, an order designating this action as an ECF case was entered on March 10, 2008 and my firm has been regularly monitoring the docket electronically to ensure that it is aware of any developments in the proceedings. The April 21 conference, however, was not listed on the electronic docket and until I received notice of the Court's April 21 Order, I was not aware that a conference had been set. Accordingly, plaintiff's failure to attend the conference does not represent a failure to prosecute the action but rather an oversight based on an outdated fax number.

Moreover, plaintiff submits that its inadvertent failure to attend the April 21 conference has not materially impeded the progress of the action. In this regard, in accordance with Federal Rule of Civil Procedure 4(i), on April 1, 2008, plaintiff sent a copy of the summons and complaint in this action by certified mail to the Attorney General of the United States and the civil process clerk of the United States Attorney for the Southern District of New York. Defendants have 30 days from when those mailings were sent to answer or otherwise respond to the complaint. As a result, defendants have yet to appear in the action and have until May 5, 2008 to respond to the complaint. Accordingly, if the action is restored to the calendar, defendants may respond to the complaint as scheduled and the parties may appear at any conference set by the Court without further delay. I have contacted Carolina Fornos, the Assistant United States Attorney that will be representing defendants in this action and she advised me that she also was not aware of the conference, but if the case is restored to the calendar, defendants will answer on or before May 5, 2008.

For the foregoing reasons, plaintiff respectfully requests that the Court restore the above-referenced action to the calendar so that the case may proceed. I am available, at the Court's

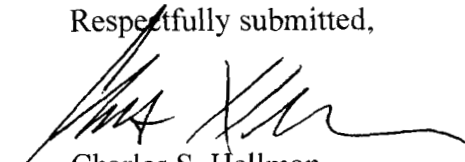
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<sup>1</sup> As indicated at the top of this letter, Drubner & Hartley's correct fax number is (212) 736-2122. This has been Drubner & Hartley's fax number since approximately November, 2005. Not included on the docket, however, is my e-mail address, which is [chellman@dhohlaw.com](mailto:chellman@dhohlaw.com). The (212) 629-4568 fax number belongs to a company called Prime Office Centers, from which Drubner & Hartley rented space prior to November, 2005. Although this apparently continues to be a working fax number, Drubner & Hartley no longer has any affiliation with the number and Prime Office Centers did not contact Drubner & Hartley to inform someone that it had received a fax addressed to the firm.

The Honorable Richard M. Berman  
United States District Judge  
April 22, 2008  
Page 3

convenience, to provide any further information or to respond to any questions that the Court may have regarding this matter.

Respectfully submitted,



Charles S. Hellman

CSH/kpr  
cc: Carolina Fornos, Esquire